

SOME
CONSIDERATIONS

On the ACT to Prevent
CLANDESTINE MARRIAGES.

IN A
LETTER

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FROM A
GENTLEMAN of the TEMPLE,

TO THE
LORD B——P of L——.



26 Geo. II. Public Acts, c. 33.

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CONSIDERATIONS

ON THE

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T. O. W. D. O. N.

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MODEL

(The British Museum)

SOME
CONSIDERATIONS
ON THE
ACT to prevent CLANDESTINE
MARRIAGES, &c.

MY LORD,

THE Eminent Station your Lordship has long deservedly filled in the Church, and your great Knowledge, both in the Ecclesiastical and Common Laws of this Country, give me Reason to hope your Lordship will excuse an Address of this Kind from one who was many Years a Part of your Flock, and has with Pleasure observed the Attention given by your Lordship to Matters of this great Importance.

The many notorious and scandalous Abuses of the Sacred Institution of Matrimony, which have been justly complained of for some Years past, could not but give Uneasiness to every serious and devout *Christian*. This gave the sober and well meaning Part of Mankind Pleasure, when they heard the Matter was brought before the Legislature, and a Bill ordered to prevent this great and deplorable Evil.

The Bill was long under Consideration, and though there were great Difficulties concerning

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many

many Parts of it, the Principles of it were so just that it passed; but not without Acknowledgment (by those who were for it) that many Parts of it were either insufficient, or deserved further Consideration.

This occasioned an Attempt to make some Alterations in this Session of Parliament, to confirm that Part of the Law, which prohibits (under the Penalty of fourteen Years Transportation) and annuls Marriages celebrated in the *Fleet*, or any other Place than Church or Chapel where Banns have been usually published, and to postpone and suspend the Execution of the rest of the Act, till several very important Clauses that annul Marriages (though celebrated with all the Solemnities of the Rubrick) be considered: But the Majority of the Assembly, wherein it was proposed, were of Opinion to try the whole Bill (as it now stands) and to see what other Objections might arise; that in a future Session proper Alterations might be made, and the whole Bill be compleat, to answer the Expectations of every Well-wisher to the Public Weal.

The Legislature having thus determined, it becomes the Duty of every Person concerned to pay a conscientious Regard to the Bill, as it now stands; to guard against any Inconvenience (as far as possible) that may arise; and to give such Assistance towards lessening the Difficulties it may occasion, as lies in their Power.

It likewise becomes the Duty of every one, who desires to remedy the Evil, to state such Objections as the present Bill shall be liable to, and make such Proposals to remedy them, as may be sufficient to form an effectual Act for this Purpose.

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These Considerations have induced me to turn my Thoughts to this Subject; and I first beg leave to observe——A Bill of this Sort ought to be confined solely to the Grievance complained of, nor ought any other Measures to interfere, nor any other Ends whatever be answered by it.

It also ought not to be hindered for the sake of any lucrative Emoluments, which accrue to the Public, or private Persons, from the present Method of performing the Marriage Ceremony: But the Public, in this Case, ought to wave their Rights; and private Persons, if they have any legal Claims to Fees or Dues on this Account, ought to have Satisfaction from the Public for the same.

But before I go further, give me leave to insist, that the Matter of clandestine and scandalous Marriages hath been long justly complained of; that the Abuses in celebrating this sacred Rite, by a Set of scandalous and unqualified Persons, have been notorious; that many virtuous Persons have been deceived by the Craft and Cunning of ill-designing People, cannot be denied: and that many young, unwary and unthinking Persons, of both Sexes, have been ruined thereby, wants no Proof. — For these Reasons, the Interposition of Parliament certainly became necessary.

Give me Leave also to consider Marriage not only most honourable, most amiable, and most respectable, in a religious Sense, but also a most useful and beneficial Institution for the social Happiness of Mankind. It is the Basis of Society; it is the Remedy against the greatest of Evils; and where it is undertaken for the Ends proposed in our most excellent Liturgy (only) it is the Establishment of earthly Happiness.——

But I desire on this Occasion to be considered as writing only to the sober, serious and virtuous Part of Mankind. Those, whose Inclinations are otherwise, and determined so to continue, not only prophane the Institution, by entering into the Married State, but lay a Foundation for their own Misery during their Lives.

I look upon Marriage to be a most solemn Contract before God, declared before his Minister, and to which God is called as a Witness:— To him therefore are the Parties accountable for the Observance; and the Breach of it will most certainly be punished by him. It is an Institution approved by Christ; and concerning which he has given Directions in the Gospel. These Directions we are bound to obey; nor can any human Law dispense with, annul, or make the least Alteration in them.

Having thus premised, I shall now proceed to consider the Act lately passed to prevent Clandestine Marriages, and point out such Parts as seem to me exceptionable; and propose such Alterations and Amendments, as (in my Opinion) are necessary to answer the Intention and Title of the Act.

But, first, I shall beg Leave to declare, I do not write this with the least Prejudice or Favour towards those, who have been for or against this Measure. I have no political Views; my sole Intention is to remedy the Evil complained of; and should a different Inference be drawn from any of the Objections I shall make, it will be a Perversion of my Meaning and Intentions; which are solely bent towards the Benefit of the Public, and the Good of Mankind.

The Foundation and Preamble of the Bill is laudable and true; and the first Clause and Proviso

vifo (concerning the publishing of Banns, and marrying publickly in the Church) are moſt properly adapted to the End; they are in themſelves almoſt an effectual Remedy of the Grievance; and had the A&t gone no further, it would not have been liable to many Objections.

But the next Clause (which is an implied Ratification of Marriage Licences) doth not ſtand ſo clear of Exception; for, I fear, it will undo all that the former Clauſes have done; nay, it will be conſtrued virtually to repeal them.—For what hath the former Clause done? It hath declared an Evil (Clandefſtine Marriages) and provided a Remedy (Publication of Banns, and public Marriages.) What doth this Clause do? It gives a Liberty (for a little Money) to revive Clandefſtine Marriages. May it not therefore be ſaid, that this firſt Clause hath declared a Crime, and the ſecond provided a Method to commit it with Impunity?

I freely own, I am one of thoſe who look upon all Licences, and Diſpenſations, to be (*prima facie*) grievous, or the Laws to be ſo: If the latter, do not make or repeal the Law; if the former, forbid the Diſpenſation.

But in this Caſe it is proper to confine theſe Conſiderations ſolely to Marriage Licences; and if I ſhew them grievous, unneceſſary, and that no Good can ariſe from them, I ſhall entitle myſelf to one Means of putting a Stop to this Evil, *viz.* the abolishing theſe Licences; and that itſelf will remove, in great Meaſure, the Grounds of Complaint.

Marriage is a Right of Nature; and where it is conſiſtent with the Laws of God and the Conſtitution, it wants no Licence or Diſpenſation for its Celebration. The parochial Miniſter is obliged

obliged (as a Part of his Duty) to perform it, where there is no Impediment; therefore Licences are unnecessary. To find out the Impediment, and give such as have a Right a Power of Objection, will be effectually answered by proper publication of Banns, and publickly performing the Ceremony in the Church: Nor can there be a Reason given for either being dispensed with, by Licences, as now practised.

Banns were first instituted in the Year 1322. The Words of the Institution are these:—* *In matrimonio quoque contrahendo semper tribus Dominicis vel Festivis a se distantibus, quasi tribus Edictis perquerant Sacerdotes a populo de immunitate sponsi & sponsæ.*

This Institution was again confirmed in 1328†; nor was it dispensed with for several Years after; nor did the first Licences dispense with all the Publications, but sometimes one, and sometimes two of them; and even this was objected to, so late as the Year 1562‡, when I find one of the Heads to be moved amongst the Clergy and Parliament was,—That no Dispensation be granted for Marriage, without the Banns asked thrice on three different Sundays or Holidays ||.

Persons, who are about to enter into the Estate of Matrimony (it is hoped) have seriously considered what they are going to do. It is also hoped, that they are not ashamed of their Designs; if so, why is the Ceremony to be performed in secret? Why not in the Face of the Publick? But it is not to avoid Shame: There are some Impediments, some Objections, they do not care to hear of; and therefore to perform this Ceremony in secret is resolved on.—But every

* *Gibson's Codex. Vol. I. 510.*

† *Ibid 511.*

|| *Ibid.*

† *Ibid 511.*

every Man and Woman, who come together (purely) for the Ends for which Matrimony was ordained have Reason (so far from being ashamed) that they ought to glory in the Action. It is one Method to let their Light shine before Men, and glorify their Father, who is in Heaven.

For this Purpose no Licence is necessary; it is expensive, and hinders setting a good Example to others, and therefore ought to be discouraged.

I have been at a Loss to find out the Original of these Licences, nor can I meet with any Law or Constitution which appoints them; nor have they any Foundation but a Popish Usurpation; wherefore they ought to be treated as other Errors of that Religion have been.—They are nothing but Devices to dispense with the Laws, nor can any one Argument be made Use of in their Favour.—But I cannot dismiss the Subject without taking Notice of what has been said for them, lest I should be thought partial on the Occasion.—It is said, it is an ancient Power lodged in the Church; it is a Right or Property the Church is possess'd of; and if they have been in some measure profitable to the Church, they have been more so to the Publick, and therefore they ought to be retained.

How ancient they have been I cannot positively say, but, I think I can say, there was a Time when they were not, long since the Time of Prescription; but that it is a Right I cannot assent to, for I cannot find any Law or Constitution for their Establishment. It is a Power indeed the Church hath assumed, and made a Property of, but how grounded doth not appear; nor can the Profit made of them by the Church

Church and Publick (without Right) be a Plea on their behalf.—For it is inconsistent with the Nature of the Church, or Publick, to support an Evil to the Community, let it be never so lucrative.

These are the Reasons given for their being retained, which I have thus endeavoured to answer: But when I come to add the Mischiefs they now occasion, I shall not leave Room even for Hesitation upon the Subject, what ought to be their Fate.—How many Persons under Pre-contracts, how many Persons (to whose Matrimony are many just and legal Impediments) are married by them? How many unthinking, unwary and ignorant Persons decoyed and ruined by this secret Method of Marriage (who, if their Banns had been duly and properly published, had been hindered?) In short, how often has Adultery, Bigamy, and the entire Destruction of reputable Families, arose from these Devices? Instances of this Kind appear often, and shew the Necessity of laying them aside.

Having thus taken Notice of the Nature of Marriage Licences, I return to the Clause in the Bill, whereby it seems the Legislature thought them capable of being abused; and therefore enacts, That no such Licence shall be granted to solemnise any Marriage in any other Church or Chapel, but where one of the Parties should have been for four Weeks next before the granting this Licence.

Let it be considered, whether this Provision is sufficient to hinder the Evil. How easy is it, within the Cities of *London* and *Westminster*, for a Sharper to secrete himself or a young Woman of great Fortune for four Weeks in any Parish? How can the Person granting the Licence be
satisfied,

satisfied, whether this Person is already married or make any Enquiry about it? It is sufficient, that he is proved to the Person granting the Licence to have been four Weeks an Inhabitant within this Parish.—This may be every Day the Case within this great City; nor will Country Parishes be entirely secure: The Person granting the Licence only is to be satisfied as to one of the Parties (to whom perhaps there may be no Objection;) the Impediment may be as to the other, who may come from a very distant Place, unknown to the said Person, and whose Qualifications are impossible to be ascertained; so that this Clause in fact by Implication establishes Marriage Licences, and no Way whatever prevents the Grievance they now occasion.

But to this Clause is added a Provifo, which seems in some sort to repeal this (insufficient) Check upon common Licences, by exempting the Archbishop of *Canterbury* and his Officers from this Provision, and declaring it shall not be construed to extend to deprive the said Archbishop and his *Officers* of the Right which hath hitherto been used, in virtue of the Statute of the 25th of *Henry VIII.* entitled, An Act concerning Peter-Pence and Dispensations; of granting special Licences to marry at any convenient Time and Place. And to this Clause is added a Provifo, that no Surrogate (generally) shall grant any such Licence, before he hath taken an Oath faithfully to execute his Office according to Law, and hath given Security by Bond in one hundred Pounds to the Bishop of the Diocese, for the due and faithful Execution of his Office.

This Clause and Provifo I am now to consider; and in the first Place, I shall resort to the

Statute in the Clause, and examine the Right the Archbishop has to grant these Licences.

The Statute enacts, That the Archbishop may grant all manner of Licences and Dispensations, &c. not inconsistent with the Scriptures and the Laws of God, heretofore used and accustomed to be granted by the See of *Rome*; so that the said Dispensations or Licences be not repugnant to the Laws of God.

Under this Clause the Archbishops and their Officers have assumed a Power of granting Licences to Persons to be married at any Time, or any Place. How the See of *Rome* became entitled to this Right doth not to me appear; nor can I find any Law or Constitution that gives it them. The Laws of God require an Obedience to the Laws of the Land, and the Rubrick and Ecclesiastical Canons declare, that Persons shall not be married, without Banns published in the Church on three *Sundays* or Holidays, and the Marriage celebrated in the Body of the Church.

This legal Institution is strictly agreeable to the Law of God, as it is the only Means of providing against any just Impediments to the sacred Rite of Matrimony; and every Institution, which doth not fully answer this Purpose, may in some measure be said to be repugnant to the Law of God: But the Power granted to the Archbishop by this Act of Parliament doth not fully answer it, because, as I have already shewn, Marriages may be solemnized with Impediments, which not only the Institution of publishing Banns intended to prevent, but also the Law of God, and therefore equally repugnant to both.

Therefore a Doubt may arise, whether the Archbishop hath any such Right.—But let us suppose, the See of *Rome* had the Power, and that

that the Act of Parliament, by these general Words, hath vested it in the Archbishop and his Officers. Is it proper to be continued ?

To answer this Question it becomes necessary to consider the Nature of the Power, the Manner of exercising it, and the ill Consequences it is liable to.

The Nature of the Power is no more than this :—The Archbishop and his Officers are authorized to grant Licences to any Persons whatever, to marry at any convenient Time or Place.—The Law of *England* forbids the Marriage of Persons under certain Ages and Degrees. It forbids Persons under Precontract to marry any, but those to whom they are engaged, (before it was otherwise provided by the very remarkable Clause in this Act.) And in order to the discovering any of these or other Impediments, it directs Banns should solemnly be published in the Church on three *Sundays* or Holidays, and the Ceremony performed in the Body of the Church.—Now the Archbishop's Licence authorises the Marriage in the most private Manner ; it cuts off every Means of finding out any of these Impediments, and provides the most secret Means for carrying on the most dangerous Frauds whatsoever. This is the Nature of the Licence.

I now proceed to the Method of obtaining them ; and first, I am to observe, there is no Application necessary to the Archbishop in this Case, nor are the Parties, because the Power is granted to his Officers before him. The Man generally applies to a Proctor, who carries him to a Surrogate ; where he takes an Oath, indeed, (which, if false, is not Perjury at Law) that he has Consent of the Parents ; but his Examination

tion of other Matters is very general: Whereupon a Licence is taken out, without seeing the Woman, or her Parents, or Friends, or giving any Account of any Impediment in respect to her: After which the Parties go to some private House in the dead of the Night, and celebrate the Rite with the utmost Secrecy. Is not this as grievous as a Marriage at the *Fleet*, or any other unlawful Place; and may not the Consequences be as fatal? A Man that is avaritious, indigent and wicked, and has an Opportunity to get into Possession of a great Estate, by a stolen Match, will seldom scruple to take a false Oath (not punishable as aforesaid) to attain his Ends.—But suppose, this may be had without Oath,—suppose, the Proctor and Surrogate should agree to dispense with the Oath,—what Remedy has the Party injured? In the Archbishop's Case none at all; and in the Case of a Bishop's Licence, the Officer's Security is but one hundred Pounds, against which the Person, for whom he has done this Favour, will take Care to indemnify him.

This is the Method of obtaining these Licences.—I shall only add a few Words touching the ill Consequences of them.

By means of these Licences, Bigamy, Adultery and Perjury, are frequently committed; many a Family ruined, Distresses entailed upon innocent Persons for Generations to come; and every Grievance arising from the present scandalous Method of marrying may be produced.

Wherefore, when the Legislature were providing against such Enormities, it was hoped the most reverend Prelate, who now presides in that See, would have waved this Privilege for the Sake of public Good; and in this I am well warranted

warranted by what a learned Divine (justly esteemed for his Learning and Integrity) writes concerning them.—*The Archbishop of *Canterbury*, in Virtue, I suppose, of the old Legatine Power, claims a Privilege of granting Licences for Persons to be married *quolibet loco aut tempore honesto*; i. e. in any decent Time or Place, A Privilege which I cannot but humbly conceive his Grace would be very backward of using, were he apprized what Indecencies generally attend it.

What I have observed before in the Case of common Marriage Licences, may be more strongly applied to this Case; and to which I will only add one or two Considerations.

The Enemies of the Church are not a few; and those, who would overturn the Constitution in that Respect, are diligent in taking hold of every Opportunity to find fault with Church Power.—What will these be apt to say on this Occasion?—The Parliament has declared Clandestine Marriages to be grievous and criminal; but the Archbishop's Office is authorised to enable the Crime to be committed with impunity. Is the Grievance or the Crime less, when done by Authority? Doth the Crime become Innocence, because authorised by the Archbishop's Officer? Clandestine Marriages are either lawful and not criminal, or the Archbishop's Officers should be restrained from authorizing them, as well as others.—I therefore hope, upon another Consideration of this Matter, the Archbishop's Licences will be suppressed.

The next Provision by the Act is for the Punishment of such who shall solemnize Matrimony in any Place but a Church or Chapel, where Banns have been usually published, unless by
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* *Wheatly* on the Common-Prayer, 421.

some special Licence from the Archbishop, or shall solemnise Matrimony before Publication of Banns, and without Licence; and this Punishment is declared to be Felony, and the Offenders liable to Transportation. The Crime, I own, is great:—But will not the Punishment be thought too severe, when a Licence from the Archbishop's Officer can dispense with the Crime, and make the Act legal? Laws ought not to be vague and uncertain; that which is criminal in one, cannot be Innocence in another.—And it is to be observed, this dispensing Power is not confined personally to the Archbishop; nor is it necessary his Officers, having Patents for Life, to consult his Grace on the Occasion. To his Officers is the Power delegated; and they are made, as it were, *Popes*, viz. to authorise the committing Felony, and indemnifying the Offender. Nay, I would put a Case.—Suppose an Information was to be made against a Clergyman for marrying a Person contrary to the Direction of this Act,—Is it impossible to get a Licence from the Archbishop's Officer antedated?—And if so, how is it possible to convict the Offender? The Officers in Doctors Commons have Patent Places, which they generally make the most of; and the only Method to guard against Inconveniences, is by removing the Possibility of Temptation.—Thus I have considered the Case of these Licences, and have wrote my Thoughts upon the Occasion: But in case other People might differ with me, and think there may be Cases which will make it either necessary or convenient for Licences, I should hope the Matter should be carefully attended to, and Care taken that none but such necessary Cases should warrant them, and that they should be granted with the utmost
Caution,

Caution, never without the Oath of the Husband of all Requisites being complied with, and all Impediments avoided, and this Oath recorded, and if proved false, the Offender to suffer as in Cases of Perjury.—But the Minister is not the only Person to be punished; the Parties are to have their Share; every such Marriage is declared to be void; by this the Sin of the Parents will be visited upon the Children to the latest Posterity.

I must own this Provision seems to me the most exceptionable of any in the Act; the Operation of it may have the most dreadful Consequences; therefore it certainly deserves a future Consideration.

Our Saviour has expressly declared,—Those, whom God hath joined together, let no Man put asunder, except in the Case of Adultery.—How can this Law then be valid? Doth it not repeal the Divine Law, which no Power on Earth can alter? The Laws of God and Nature have instituted Matrimony;—and Man hath taken upon him to declare the Laws of God and Nature void!—I hope I shall not be thought blameable, if I declare, all human Laws ought to be consistent with the Laws of God; and those which are repugnant thereto, I cannot but look upon as void.

It may be said, that the Council of *Trent* declared all Clandestine Marriages null and void. To answer this, take Dr. *Taylor's* Opinion upon that Declaration.—‘They have (writes he) over-acted their Zeal against a temporal Inconvenience, and burnt their House to roast an Egg. They destroy the Law of Nature by a Law of the Church, against the former Practices, Councils
‘ and

* *Taylor's Ductor Dubitant.* 192.

‘ and Resolutions of their own Church : For if
 ‘ these Contracts are in themselves naturally va-
 ‘ lid, they cannot rescind them.

Were there no other Objection to this Provision, this only were sufficient to warrant an Alteration :—But when we come to consider the Consequences attending the annulling of Marriages, I am convinced, no Argument whatever can be thought sufficient to support it.

It is a Punishment of innocent Children :—They are hereby made illegitimate, debarred the Right of Inheritance, and the Scandal perpetuated to the last Generation.

A Woman is supposed not to be skilled in the Laws of the Kingdom ; nor doth she know, whether the Licence for her Marriage is good or not. She may be persuaded she is married by a Licence from the Archbishop ; and in consequence of such Marriage may have cohabited with her Husband many Years, and become the Mother of many Children. Should a Difference after all this happen between the Husband and Wife, the Husband will have it in his Power to annul his Marriage, and illegitimate his Children. Will not this be a dreadful Consequence ? Or suppose such a Licence should be forged by the Husband, which may be the Case, the Wife and Children will be equally liable both to be imposed on, and to suffer by the Consequence. In all such Cases Care should be taken to preserve the Innocent, which cannot be done in the present : Wherefore, adding these Inconveniences to the Objection I have before stated, I think and hope, no Objection ought to be made to the Alteration of this Provision.

This Act then goes on to provide for the Marriages of Orphans and Minors, and enacts, That
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all Marriages by Licence, where either of the Parties (not being a Widower or Widow) shall be under the Age of twenty-one Years, which shall be had without the Consent of the Father of such of the Parties so under Age (if then living) first had and obtained; or if dead, or of the Guardian or Guardians of the Person or Party so under Age lawfully appointed, or of one of them; and if there be no such Guardian or Guardians, then of the Mother living and unmarried; and if no such, then of a Guardian or Guardians appointed by the Court of Chancery, shall be absolutely null and void.

This Clause is liable to the same Objection as the former, *viz.* that the Penalty is contrary to the Laws of God; and the Innocent are liable to suffer, which is very unreasonable. A Man who marries a Person under Age, seized of Lands in Tail or in Fee, without the Consent of Parents or Guardians, is certainly guilty of a Crime; but he is not here punished, he will be capable to enjoy the Profits of his Wife's real Estate, as soon as she comes of Age, and get into Possession immediately of her personal Estate, which the Woman, if he has engaged her Affections, will be very apt to give him. But in case the real Estate be entailed, it shall not descend to their Children; they are illegitimate, and cannot inherit their Mother's Patrimony, tho' innocent of any Crime.—This seems very unreasonable, and deserves farther Consideration.

The next Clause is very remarkable: It creates a new Jurisdiction in the Court of Chancery, and vests that Court with new Powers. It enacts, That in case the Guardians or Mother of such Minor shall be incapable, either by being *non compos*, or beyond the Seas, or shall abuse their

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Trust,

Trust, or refuse or withhold their Consent to such Minor's Marriage unreasonably, it shall and may be lawful for any Persons desirous of marrying, in any of the before-mentioned Cases, to apply by Petition to the Lord Chancellor, &c. who is and are empowered to proceed upon such Petition in a summary Way, and make Order therein, which shall be good and effectual to all Intents and Purposes, as if the Guardian or Guardians had consented to such Marriage.

This seems to be a Power of great Extent, and may it not be thought little less than a Revival of one Part of the Jurisdiction of the Court of Wards and Liveries. The Persons intrusted with this Power ought to be almost divested of human Frailty; but when we come to examine the Histories of this Country, and find Persons of the greatest Parts, great Learning, and who long preserved the greatest Reputation in this high Office, fall into Temptation, and not able to withstand Corruption. — Nay, when in very modern Times we recollect a Lord Chancellor has been impeached and found guilty of high Crimes and Misdemeanors of this Sort. — When we consider, and as we cannot tell in whose Hands this high Office may hereafter be placed, — it is impossible to reflect on this Clause unconcernedly : — For the greatest Part of the Orphans of this Kingdom may be Objects of this Provision, and their Persons and Fortunes, against the Consent of their Parent and Guardians, be disposed of by this great Officer. — I should therefore hope this Clause will deserve Re-consideration.

These are the general Provisions of this Bill; the other Parts of it are only Clauses to direct the Execution: And though I am one of those who
long

long wish'd for a Remedy for this Grievance, and was glad to see any Attempt to reform it; yet I cannot approve of these Provisions I have taken Notice of, for the Reasons I have given. I shall therefore beg Leave to offer to the Public a short Sketch of a Bill to cure this Evil, and effectually answer every End that can reasonably be desired.

The first Clauses of this present Bill, and the two first Proviso's which follow it, I would make the Foundation of the Act.—And the Person who should marry any Persons otherwise than therein prescribed, should forfeit and lose (upon due Conviction) all his Ecclesiastical Preferment, and be incapable of taking and holding any other such Preferment for ever then-after.

That the Husband, who should marry in any other Manner than therein directed, shall be deemed guilty of Felony, and be transported, &c. nor shall he or his Wife be entitled to, have, or take, any real or personal Estate, by virtue of such Marriage; but such real and personal Estate, from the Time of such Marriage, shall be vested in Trustees to the Use of such Child or Children as shall be the Product of such Marriage; and in Case there shall be no such Child or Children, then to the Use of such Person or Persons as by Law, for want of such Child or Children, should be entitled thereto.

Having thus considered, and offered my Thoughts upon the Amendment of the Act, I shall only beg leave to add a few general Considerations upon the Act, which may induce those whom it may concern to read these Observations with Attention.

First, then, I am afraid this Act will be the Occasion of the Sin of Fornication.—The Difficulties, Doubts, and Uncertainties the Mi-

nister may be under, who is to perform this Rite, added to the Penalty he is made liable to, will no doubt make him cautious ; and in many Cases, if his Scruples should incline him, to refuse to do his Office, Nature, I fear, would overpower the virtuous Inclinations of many, and prevail on them to follow its Dictates in an unlawful Way, when they have been refused (after doing all in their Power) to have it made lawful.—Indeed, I am afraid, this may often be the Case ; for there seems to me to be only one Case, where the Minister will be entirely free from Doubts ; which is, where both the Parties are known to him, and live in his own Parish.—For the Certificate of Banns may be forged ; they may have never been asked ; the Licence may be the same ; and in both these Cases the Minister will be guilty of Felony.—It may also happen, that the Licence may by other Means be illegal ; there may be Disputes between the ordinary and peculiar Jurisdictions, who hath the Power of granting Licences ; and if upon Trial it shall be found the Licence was granted by a wrong Person, the Minister who marries thereby will be guilty of Felony. I admit the Words (knowingly and wilfully) are inserted in the Clause ; whether they will answer the Objection, is to be considered ; *Knowingly* may depend on Circumstances which may often differ ; and though they may be Proof of the Scienter in one Case, they may not be so in another. These Circumstances may satisfy many Persons of the Guilt of a Person, when he may be entirely innocent, in his own and other Persons Opinions. What has he then to do ? Can he prove *positively* he did not *know* ; every one knows it to be impossible to prove a Negative.

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The Proof of certain Knowledge very seldom arises, or can be made appear, by any but Accomplices, and they have always been deemed the worst of Evidences. *Wilfully*, in this Case, will be proved more easily; no Clergyman is obliged to marry by Licence; he may choose whether he will or not; and if he doth it, he must do it wilfully — and yet may be innocent within the Intent of this Act. — But supposing these Words may be sufficient to acquit a Clergyman upon a Trial, will he not be a Sufferer? The Justice of the Peace, upon an Information that he hath married a Person without Banns being published, without Licence, or by an illegal one, can't try the Fact, whether he did it Knowingly, or Wilfully; he must send him to Prison, where he must continue till tried; he is not bailable. The Grand Jury only hear (at least they ought not) the Evidence of the Accuser; they must upon probable Cause put the Party upon his Trial. They can't (at least they ought not) to examine into the Defence that only can appear to a petty Jury, who will judge whether he did it Knowingly and Wilfully or not; and if it shall appear he did not Know, or did not Wilfully commit the Crime, he will have the Satisfaction of being acquitted; but what other Amends will he have for the Imprisonment, for the Scandal, for the Expences he has suffered? Will not these Difficulties raise Scruples in the Minds of the well-meaning Clergymen? Can they be blamed for refusing to do their Duty, where they have the least Doubt? — These Difficulties are not imaginary; nor do I think these Words in the Act has clearly and plainly provided against them; wherefore they certainly deserve Re-consideration. — Many Cases

Cases of this Kind have happened ; therefore this will make a Clergyman very cautious.

In the Case of Banns it is easily remedied. Let the Certificate be sworn to before the next Justice of the Peace to the Parish where published ; or let the People who bring it authenticate it by Oath before the Minister, to be kept with the Register of the Marriage : And when this is done let the Minister be indemnified. Certificates of Settlements are authenticated by Law in this Manner at this Time.

But I cannot help making one Observation upon this Bill, for which I own I am at a Loss how to account, which is, that the only Person subject to Felony by this Clause is the Clergyman. The Archbishop's Officers have no Penalty at all. Those of the Bishops and others, who are authorised to grant Licences, are only to lose one hundred Pounds, nor is the Breach of their Oath made Perjury. The Man who is married, who is well informed of every Circumstance, knows every Impediment, imposes on the Minister, brings the false Licence or false Certificate, is not at all taken Notice of, only to bind his Marriage, which if it was for the Sake of his Wife's Fortune (or to gratify a vicious Inclination) which vests in him by the Ceremony, and he takes Care to dispose of as soon as he has it ; so far from Punishment, that perhaps he has his Inclinations answered, he gets rid of his Wife, and is at Liberty to play the same Game again upon the first Opportunity.— Can any Man read this without Concern ? Can they see a Clergyman, innocent in Intention, imposed upon by a most notorious Villain, suffer in the most dreadful Manner, and the chief Actor escape with Impunity ?

Though

Though a Layman, I cannot but feel for the Clergy on this Occasion. They are a most respectable Body of Men, and though there may be some undeserving among them, I cannot see the whole Body suffer without the utmost Concern. It is certain, among the Twelve Apostles there was a *Judas*; but his Crimes never reflected on the other Eleven.

I would also observe, the Clergy have given many Instances of their Zeal for the present Establishment. Had it not been for them, the Revolution would not have made its Way as it did. Had they not taken the Oaths, and advised others to have done so, the Number of Nonjurors would have been much greater than it is now. Surely the Friends of the Government would not do any Thing to distress that Body, to whom they have such Obligations.

In this Case the conscientious Clergyman will have his Doubts and his Fears, and for the Reasons I have mentioned I cannot blame him: I therefore hope, for their Sakes, this Matter may be again reconsidered.

I shall detain you no longer on this Occasion, than to add one Piece of Advice to all, that this Bill may concern.—The Bill is past, the Time of Commencement draws near, and it is the Duty of every one to submit to the Law.—Benefit will certainly arise from it, as it will put a Stop to the *Fleet* and other such Marriages. As to other Matters, I hope the Clergy will not raise Difficulties where there are none; and where there are real Difficulties I cannot blame them, if they act with Caution.

I also hope Persons, who apply to the Clergy on this Occasion, will act with the utmost Candour and Truth, and give them all the Satisfaction

faction they can in the Matter. This will enable the executing of those Parts of this Law (which are really beneficial) with Ease, and engage the Legislature, on a future Occasion, to remove the real Difficulties, and do every other Thing proper to answer the Wishes of those who really desire to have these great Evils amended.

I had some Hesitation with myself, whether I should make these Considerations public, till the Law had been experienced; but many well-disposed Persons having expressed some Uneasiness on the Occasion, I was encouraged by the Advice of some very worthy Persons, to whose Opinion I pay great Deference, to lay them before the Public, not as finding Fault with the Measures of Government, but with the utmost Submission stating the Difficulties, some of which I apprehend would deserve a speedy Consideration; and I flatter myself, as this is my Design, your Lordship will consider these Sheets in that Light only, and believe me to be,

My LORD,

Your Lordship's most obedient,

March 18,

And dutiful Servant,

1754.

A Member of the Temple.

P O S T

P O S T S C R I P T.

SINCE I wrote the foregoing Sheets, I have seen a Copy of the Licence, which is to be made use of for Marriage, as also the Act of Court upon which it is to be granted; and of the Bonds designed to be taken upon the Occasion; which makes it necessary to add a few Observations, by way of Postscript.

The Licence recites, that the Parties have resolved to proceed to the Solemnization of lawful Matrimony (for the Causes and upon the Qualifications of the Parties therein set forth) and desire the same may be solemnized in the Face of the Church, wherefore the Person (authorised to grant such Licence) being willing that these Desires may the more speedily and publickly be performed in the Parish Church, &c. by the Rector, &c. without the Publication or Proclamation of the Banns of Matrimony, at any Time of the Year (provided there shall appear no lawful Impediment in this Case, by Reason of any Precontract entered into before the 25th of *March*, 1754, Consanguinity, Affinity, or other Cause whatsoever, or any Suit, Controversy, or Complaint be moved or now depending before any Judge, &c. and likewise that the Celebration of the said Marriage be had in the Church, &c.) authorising the Parties and Minister to celebrate the Marriage:

riage: And then is inserted a Proviso, That if in any Case there shall hereafter appear any Fraud suggested to the Person granting the Licence, or any Truth suppressed at the Time of obtaining the Licence, then the Licence to be *void* and of *none Effect* in Law, as if the same had *never* been granted; and in that Case the Minister is inhibited (if any thing comes to his Knowledge) to celebrate the Marriage, without consulting the Person granting the same, &c.

Upon this Licence these Considerations do arise:

1. The Licence sets forth a general Application; it doth not particularize the Requisites which have been performed, nor any Reasons for dispensing with the Publication of Banns.

2. It is only a *Conditional* Licence; for it is said, Provided there shall appear no lawful Impediment, &c.

How is this lawful Impediment to appear to the Minister, after he receives the Licence? He is not authorised to make any Enquiry: it is sufficient for him he has the Licence. How is he to know whether there be any Suit depending? He has no Power to search the Records of the Court, &c. This is the first Condition, and relates to Matters before the Marriage: But there is another Condition, which is of another Kind, and concerns the Marriage after being performed. It is this: That in Case it shall appear hereafter, any Fraud suggested, (to the Person granting the Licence) or Truth suppressed at the Time of obtaining the Licence, then the Licence to be void and of none Effect, &c. Let us consider the Consequence of this.—A Man comes to a Minister, brings a Licence, and

and a Marriage is celebrated in pursuance of the same. The Fraud appears after; the Licence becomes void: The Issue of the Marriage is illegitimate, though the Marriage be celebrated in virtue of a Legal Licence (at the Time of the Marriage) and as it is declared to be void to all Intents and Purposes, will not the Minister incur the Penalty of the Act, which prohibits his marrying without Licence, that Licence being declared a void one, by which he did it? Will a Clergyman care to be made an Object of trying this Point upon a special Verdict?—Surely this is a further Reason for a *Review*.

Persons marrying by Licence do not use to take out the Licence long before the Time of Celebration; nor do they put it into the Minister's Hand till the Time of Celebration; so it is impossible to make an Enquiry: Nor can he consult the Person granting the Licence thereupon; so that the Inhibition of Marriage is of no Use. In short, these Provisions in the Licence seem only to make good the Proverb, *When the Horse is stolen, shut the Stable-door*.

The next Thing I am to observe upon, is the Act in the Faculty Office, before the granting the Licence. This Act sets forth, That the Man to be married has appeared in Court, and applied for a Licence to be married to such a Woman. He swears to his own Qualifications, and that the Woman is of Age, or has proper Consent; and that there is no Impediment, &c.

Upon this it is to be considered, This Person is an Evidence in his own Cause; which the Law forbids: Neither the Woman, or her Friends, or any on her Behalf, appear to satisfy the Requisites performed relating to her: And

the Objection to the Man's Oath in this Case is much stronger than in other Cases; for here he doth not incur the Penalties of Perjury, as he would were he sworn in any Court of *Westminster-Hall*.—This certainly is a great Objection to this Method of Proceeding, and deserves Notice.

There are also two Bonds taken at the Time of granting the Licence; the one (in Pursuance of the Act) for the due Performance of the Surrogate's or Officer's Duty; and the other from the Party taking out the Licence, that his Motives are just, and that he has not imposed on the Person granting the Licence. As to the former, I shall not object to it; but the last Clause of the Condition of the latter I cannot help taking Notice of.—It is thus:—" And
 " lastly, if the Marriage shall be openly solem-
 " nized in the Church, in the Licence specified,
 " between the Hours appointed in the Consti-
 " tutions Ecclesiastical confirmed, and accord-
 " ing to the Form of the Book of Common-
 " Prayer now by Law established; and if the
 " above bounden shall save harmless, and keep
 " indemnified the above-mentioned Reverend
 " Father, his Commissary of the Faculties, and
 " all other his Officers and Ministers whatso-
 " ever, by reason of the Premisses, then this
 " Obligation to be void, or else to remain in
 " full Force and Virtue."

The latter Part of this Clause surely deserves a more than ordinary Observation. The Indemnification is most extraordinary.—If the Person granting Licence has done nothing wrong, he wants no Indemnification. If he has done wrong, he ought not to have it. Will not this take away the Force of the Clause in the Act for
 keeping

keeping the Surrogates, &c. to their Duty? Surely this cannot be admitted.

By this Clause, the Person granting the Licence, and every Officer, &c. belonging to such Person, is to escape with Impunity: But I cannot help observing, the poor Minister, who marries in pursuance of this, is left to the Law, and no Care taken of him. Is not this very unreasonable?

These last Observations are of a very serious Nature, and such as could not appear upon the late Application to Parliament. If they had, I am satisfied they would have been regarded: But I hope it is not yet too late (as the Parliament is now sitting) to get something done, even this Session, to hinder the Confusions which this (now declared) Method of putting this Act in Execution may occasion.

F I N I S.

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 is now sitting) to amend the Bill, even this
 Session, so hinder the Method of putting this Act in
 Execution may occur.



F. V. I. 2